

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

DIANA MEY, et al., individually
and on behalf of a class of all persons
and entities similarly situated,

Plaintiffs,

v.

Case No. 5:17-CV-00179

DIRECTV, LLC,

And

ACI COMMUNICATIONS, et al.,

Defendants.

PERFECTVISION MANUFACTURING, INC.'S ANSWER TO
THIRD AMENDED COMPLAINT

PerfectVision Manufacturing, Inc., through its undersigned counsel of record, files this Answer to the Third Amended Complaint. In specific response to the allegations in the Third Amended Complaint, PerfectVision states as follows:

1. In response to paragraph 1 of the Second Amended Complaint, PerfectVision admits that the Federal Trade Commission issued a Biennial Report to Congress in December 2017 and that the Report speaks for itself.

2. Paragraph 2 of the Second Amended Complaint states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 2.

3. In response to paragraph 3 of the Second Amended Complaint, PerfectVision denies that it has engaged in illegal telemarketing or violations of the TCPA. PerfectVision is

without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 3.

4. In response to paragraph 4 of the Second Amended Complaint, PerfectVision denies that it has engaged in illegal telemarketing or violations of the TCPA. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 4.

5. In response to paragraph 5 of the Second Amended Complaint, PerfectVision denies that it has engaged in illegal telemarketing or violations of the TCPA. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 5.

6. Paragraph 6 of the Second Amended Complaint states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, PerfectVision denies that it attempted to shirk its responsibility under any set of laws, and that it is liable to plaintiffs under the TCPA; it is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 6.

7. Paragraph 7 of the Second Amended Complaint states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, PerfectVision denies that it violated the TCPA or any other law for its own or another party's benefit, that it placed illegal calls, that it invaded any plaintiff's privacy, or that it engaged in unwanted telemarketing. It is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 7.

8. In response to paragraph 8 of the Second Amended Complaint, PerfectVision denies that it made illegal telemarketing calls. It is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 8.

9. In response to paragraph 9 of the Second Amended Complaint, PerfectVision denies that it violated the law. It is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 9.

10. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 10.

11. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 11.

12. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 12.

13. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 13.

14. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 14.

15. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 15.

16. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 16.

17. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 17.

18. Paragraph 18 states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 18.

19. Paragraph 19 states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 19.

20. In response to paragraph 20, PerfectVision admits that paragraph 20 states a portion of the Telephone Consumer Protection Act of 1991 (TCPA), and that the TCPA speaks for itself. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 20.

21. In response to paragraph 21, PerfectVision admits that the TCPA created the National Do Not Call Registry, and that a consumer may add a telephone number to the Registry to indicate her desire not to receive telephone solicitations. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 21.

22. In response to paragraph 22, PerfectVision admits that the TCPA and its implementing regulations prohibit the initiation of telephone solicitations to residential telephone subscribers, and that the TCPA and its implementing regulations speak for themselves.

23. In response to paragraph 41, PerfectVision admits that the TCPA and its implementing regulations prohibit, among other things, a person from making calls to cellular telephone lines using an “automatic telephone dialing system” or to make calls to initiate calls to a residential telephone line using an artificial or prerecorded voice, without the recipient’s

express consent, unless the call is exempt. PerfectVision also states affirmatively that the TCPA, its implementing regulations, and the cases interpreting them speak for themselves.

24. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 24.

25. In response to paragraph 25, PerfectVision admits that portions of the language of paragraph 25 are quoted from the referenced Declaratory Ruling, but PerfectVision denies that the quoted language is entirely quoted from the paragraph cited.

26. Paragraph 26 states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, PerfectVision admits that in the referenced court decision, the U.S. District Court for the District of Maryland concluded that if a corporate officer “directly participated in or authorized the statutory violations, they may be personally liable under the TCPA.”

27. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 27.

28. In response to paragraph 28, PerfectVision denies that it made illegal telemarketing calls. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 28.

29. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 29, including the allegations contained within the chart pasted within paragraph 29.

30. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 30.

31. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 31.

32. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 32.

33. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 33.

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261. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 261.

262. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 262.

263. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 263.

264. In response to paragraph 264, PerfectVision denies that it violated the TCPA; PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 264.

265. In response to paragraph 265, PerfectVision denies that it engaged in illegal telemarketing; PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 265.

266. PerfectVision admits the allegations contained within paragraph 266.

267. PerfectVision admits the allegations contained within paragraph 267.

268. PerfectVision denies that it engaged in illegal telemarketing practices; PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 268.

269. In response to paragraph 269, PerfectVision admits that the United States filed a complaint against DirecTV, among others, on April 16, 2009. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 269.

270. In response to paragraph 270, PerfectVision states that the Complaints speak for themselves. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 270.

271. In response to paragraph 271, PerfectVision admits that the United States and DirecTV entered into a Stipulated Judgment and Order for Permanent Injunction on April 23, 2009, and that the Stipulated Judgment contains, among other things, the terms stated in paragraph 271.

272. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 272.

273. In response to paragraph 273, PerfectVision denies that it violated the TCPA; PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 273.

274. In response to paragraph 274, PerfectVision denies that there is a class or that Plaintiffs have met the requirements to establish that there is a class of plaintiffs to bring claims against PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 274.

275. In response to paragraph 275, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 275.

276. In response to paragraph 276, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 276.

277. In response to paragraph 277, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 277.

278. In response to paragraph 278, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 278.

279. In response to paragraph 279, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 279.

280. In response to paragraph 280, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 280.

281. In response to paragraph 281, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 281.

282. In response to paragraph 282, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 282.

283. In response to paragraph 283, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 283.

284. In response to paragraph 284, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 284.

285. In response to paragraph 285, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 285.

286. PerfectVision is without sufficient knowledge or information at this time to admit or deny the allegations contained within paragraph 286.

Count One

287. In response to paragraph 287, PerfectVision incorporates by reference and realleges each of paragraphs 1-286 of this Answer as if stated fully herein.

288. In response to paragraph 288, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 288.

289. In response to paragraph 289, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 289.

Count Two

290. In response to paragraph 290, PerfectVision incorporates by reference and realleges each of paragraphs 1-289 of this Answer as if stated fully herein.

291. In response to paragraph 291, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 291.

292. In response to paragraph 292, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 292.

Count Three

293. In response to paragraph 293, PerfectVision incorporates by reference and realleges each of paragraphs 1-292 of this Answer as if stated fully herein.

294. In response to paragraph 294, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 294.

295. In response to paragraph 295, PerfectVision denies the allegations insofar as they are directed at PerfectVision. PerfectVision is without sufficient knowledge or information at this time to admit or deny the remaining allegations contained within paragraph 295.

311. PerfectVision denies each and every allegation of the Third Amended Complaint not specifically addressed herein.

312. PerfectVision denies that the Plaintiffs are entitled to the relief sought in the Third Amended Complaint, including that within the unnumbered paragraph labeled “Relief Sought” or to any relief against PerfectVision.

First Defense

The Third Amended Complaint fails to state a claim against PerfectVision upon which relief may be granted.

Second Defense

Plaintiffs, or members of the class that Plaintiffs seek to represent, may have expressly consented to receive calls.

Third Defense

PerfectVision may have had a good faith basis to believe that Plaintiffs, or members of the class that Plaintiffs seek to represent, expressly consented to receive calls.

Fourth Defense

Plaintiffs' claims, or the claims of the class members they seek to represent, may be barred because any calls may have been in error and PerfectVision has in place routine business practices to comply with do-not-call rules.

Fifth Defense

Plaintiffs' claims, or the claims of the class members they seek to represent, may be barred because PerfectVision has an established business relationship or personal relationship with them.

Sixth Defense

This Court may lack personal jurisdiction over PerfectVision Manufacturing with respect to the claims of the plaintiffs or the class members they seek to represent.

PERFECTVISION MANUFACTURING, INC.
By Counsel,

/s/ Jacob A. Manning

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

DIANA MEY, et al., individually
and on behalf of a class of all persons
and entities similarly situated,

Plaintiffs,

v.

Case No. 5:17-CV-00179

DIRECTV, LLC,

And

ACI COMMUNICATIONS, et al.,

Defendants.

CERTIFICATE OF SERVICE

This is to confirm that a copy of the foregoing Answer was electronically filed on October 23, 2020. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and the filing may be accessed through that system.

/s/ Jacob A. Manning
Jacob A. Manning